

REMARKS

Claims 6 and 7 have been cancelled and new claim 21 has been added. Claims 1 - 5 and 8 - 21 are now pending in this application. Claims 1, 8, 9 and 13 - 16 have been amended to more particularly point out and distinctly claim the invention. In view of the above amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

The drawings stand objected to as including several informalities. Specifically, the specification has been amended to describe the reference signs 36, 42, 43, 55, 65, 75, 120, and 150. In view of the above amendments to the specification and drawings, it is respectfully submitted that this objection should be withdrawn. It is respectfully submitted that no new matter has been introduced.

Claims 9 - 12 and 16 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. In view of the above amendments, it is respectfully submitted that all of the claims fully comply with § 112 and that this rejection should be withdrawn.

Claims 7, 8, and 13-15 stand objected to as dependent upon rejected base claims but have been deemed allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 1 from which all of claims 1 - 16 depend has been rewritten to incorporate the subject matter of claim 7 and intervening claim 6.

It is therefore respectfully submitted that all of claims 1 - 16 are allowable and the prior art rejections of all of these claims should be withdrawn.

Claims 1 - 5, 17, 18 and 20 stand rejected under 35 U.S.C. § 102(b) as anticipated by McGuckin I (U.S. Patent No. 5,868,760). Claims 17-19 also stand rejected under 35 U.S.C.

103 as obvious over Harrison (U.S. Patent No. 5,403,326) in view of Tsuruta (U.S. Patent No. 5,389,098).

Claim 17 recites a method for stapling tissue, comprising the steps of moving jaws of a stapling mechanism “relative to one another from a closed position to an open tissue receiving position *using a first jaw moving mechanism for gross adjustment of the position of the jaws relative to one another*” and “drawing a folded, full-thickness portion of tissue from one of the patient’s stomach and esophagus between the jaws” in combination with the steps of “moving the jaws from the open position to the closed position *using the first jaw moving mechanism to clamp the tissue between staple slots formed in the first jaw through which staples are fired by the stapling mechanism and the staple forming surface, wherein the staple slots are arranged in a row extending from a proximal end of the first jaw to a distal end thereof*” and “adjusting the position of the jaws relative to one another using a second jaw moving mechanism for fine adjustment of the position of the jaws relative to one another.”

It is respectfully submitted that claim 17 is allowable for the same reasons as claim 7. Specifically, McGuckin I shows no such first and second mechanisms and clearly neither shows nor describes the steps of using such a gross and fine adjustment mechanisms to operate on gastro-esophageal tissue.

It is therefore respectfully submitted that claim 17 is allowable and that this rejection should be withdrawn.

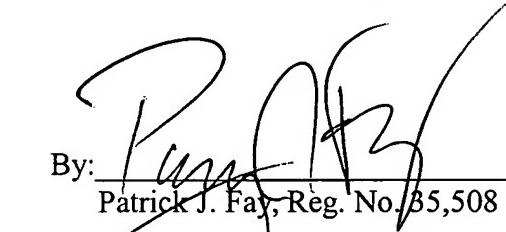
Specifically, the devices of Harrison and Tsuruta are not inserted through a patient’s mouth. Rather, these devices are inserted directly into the patient’s body via surgical openings. Specifically, the device of Harrison is inserted “through the skin 35 and the abdominal wall 36 into stomach 20.” (Col. 5, lines 26-27) while the device of Tsuruta is “inserted into a body cavity through an incision made in a body wall.” (Col. 2, lines 44 - 46). In contrast, the method recited in claim 17 provides for grabbing and drawing tissue using an endoscope device

that is inserted through the patient's mouth. Thus, the device according to the present invention does not require making of any surgical openings prior to performing the operation.

Thus, it is respectfully submitted that none of the cited references either shows or suggests inserting into a patient's mouth a flexible endoscope device" and "drawing a folded, full-thickness portion of tissue from one of the patient's stomach and esophagus between the jaws" and that claim 17 is not rendered obvious by Harrison and Tsuruta, either taken alone or in combination. It is therefore respectfully submitted that the rejection under § 103 should be withdrawn. Because claims 18 - 20 depend from and, therefore, include all of the limitations of claim 17, it is submitted that these claims are also allowable.

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

By: 
Patrick J. Fay, Reg. No. 35,508

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, New York 10038
Tel: (212) 212-619-6000
Fax: (212) 208-6819

Dated: November 3, 2003